

submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

[53 FR 35706, Sept. 15, 1988, as amended at 54 FR 39727, Sept. 28, 1989; 56 FR 67481, Dec. 31, 1991; 59 FR 54788, Nov. 2, 1994]

#### §§ 1943.86–1943.87 [Reserved]

#### § 1943.88 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower of the loan closing date. The following appropriate actions will be taken in connection with, and after loan closing:

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of subpart B of part 1927 of this chapter except as modified for loans of \$10,000 or less in paragraph 1943.69(a)(6).

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in subpart B of part 1941 of this chapter for Operating loans. The following forms will be used for chattel security:

(1) Form FmHA or its successor agency under Public Law 103-354 440-15, "Security Agreement (Insured Loans to Individuals)."

(2) Form FmHA or its successor agency under Public Law 103-354 440-25, "Financing Statement," or, when authorized, Form FmHA or its successor agency under Public Law 103-354 440-A25, "Financing Statement."

(3) State forms may be used if National forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is

needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so; and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out; and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter.

(1) For assignment of income, Form FmHA or its successor agency under Public Law 103-354 443-16, "Assignment of Income from Real Estate Security," will be used, except, if it is legally inadequate in a State, it may be adapted

to that State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA or its successor agency under Public Law 103-354 443-16 is executed, appropriate notations will be made on Form FmHA or its successor agency under Public Law 103-354 1905-1, "Management System Card—Individual," to insure the proceeds, or the specified portion of the proceeds assigned to FmHA or its successor agency under Public Law 103-354 from the transactions are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA or its successor agency under Public Law 103-354 1940-17, "Promissory Note," will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA or its successor agency under Public Law 103-354 Loan made simultaneously with the SW loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA or its successor agency under Public Law 103-354 notes to be secured by real estate can be described in the same mortgage.

(3) The promissory note will be signed as follows:

(i) *Individuals.* Only the applicant(s) will sign the note as a borrower. If a co-signer is needed (see §1910.3(e) of subpart A of part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA or its successor agency under Public Law 103-354 is to incur individual personal liability regardless of any State law to the contrary.

(ii) Cooperatives or corporations. The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

(iii) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in a partnership or joint operators in the joint operation, as individuals.

(h) *Supplementary payment agreement.* Form FmHA or its successor agency under Public Law 103-354 440-9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in §1943.74(d) of this subpart.

(j) *Effective time of loan closing.* An SW loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgages:

(i) When the original recorded instrument is returned to the County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds:

(i) Give the original to the borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies:

(i) File the Mortgagee title policy in the County Office file, and

(ii) Give the owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the County Office file.

## (5) Abstracts of title:

(i) Return to the borrower, except when they were obtained from a third party with the understanding they would be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA or its successor agency under Public Law 103-354 140-4, "Transmittal of Documents," will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

[53 FR 35706, Sept. 15, 1988, as amended at 56 FR 67481, Dec. 31, 1991; 57 FR 18679, Apr. 30, 1992; 58 FR 48289, Sept. 15, 1993; 59 FR 25801, May 18, 1994]

**§§ 1943.89-1943.91 [Reserved]****§ 1943.92 Servicing.**

SW loans will be serviced in accordance with subpart A of part 1965 of this chapter. Chattel security for SW loans will be serviced in accordance with subpart A of part 1962 of this chapter. Bureau of Reclamation (BR) loans made during the period August 19, 1977, through September 30, 1977, will be serviced in the same manner as Soil and Water loans. See exhibit A of this subpart, "Memorandum of Understanding Between the Bureau of Reclamation, Department of the Interior, and the Farmers Home Administration or its successor agency under Public Law 103-354, Department of Agriculture," for additional information on these loans.

**§ 1943.93 Subsequent SW loans.**

A subsequent SW loan is a loan made to a borrower who is currently in debt for an SW loan.

(a) Subsequent loan may be made for the same purposes and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage; or

(2) The real estate mortgage has a future advance clause and a State supple-

ment provides authority for using such a clause; or

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

**§ 1943.94 Subordinations.**

Subordinations in favor of other lenders will be processed in accordance with subpart A of part 1965 of this chapter.

**§§ 1943.95-1943.99 [Reserved]****§ 1943.100 State supplements.**

State supplements will be issued as necessary to implement this subpart.

EXHIBIT A TO SUBPART B—MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR AND THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354, DEPARTMENT OF AGRICULTURE

Whereas, under section 8 of the 1977 Drought Emergency Act (P.L. 95-18), hereafter referred to as "the Act," the Bureau of Reclamation (BR) is authorized to make loans to irrigators for the purpose of undertaking construction, management, conservation activities, or the acquisition and transportation of water, which can be expected to have an effect in mitigating losses and damages resulting from the 1976-1977 drought period;

Whereas, the Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 has an existing soil and water program (SW) authorized by section 304 of the Consolidated Farm and Rural Development Act for loans to individuals that accomplish purposes similar to those in the Act;

Whereas, it is more efficient and in the best interests of the United States, and in accordance with section 6 of the Act, for BR to procure the services of FmHA or its successor agency under Public Law 103-354 pursuant to the terms of the Economy Act of 1932 (31 U.S.C. 686) to make and service loans to individual irrigators as authorized by the Act.

Now therefore the parties agree:

1. For purposes of this Memorandum the term *irrigators* shall mean any person or legal entity who holds a valid existing water right for irrigation purposes within the Federal reclamation projects. Federal reclamation projects means any project constructed or funded under Federal reclamation law and